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20 **UNITED STATES DISTRICT COURT**
21 **CENTRAL DISTRICT OF CALIFORNIA**
22 **WESTERN DIVISION**

23 **EMMA LOMAN, an individual,**

24 Plaintiff,

25 - against -

26 **HARVEY WEINSTEIN, an individual,**

27 Defendant.

No.: 2:18-cv-07310-CBM-KS

28 **MEMORANDUM OF
LAW IN OPPOSITION
TO MOTION TO
DISMISS**

TABLE OF CONTENTS

1		
2	PRELIMINARY STATEMENT.....	1
3		
4	STATEMENT OF FACTS.....	5
5	ARGUMENT.....	7
6	I. LOMAN’S CLAIMS ARE TIMELY BECAUSE ANY STATUTES OF	
7	LIMITATIONS HAVE BEEN TOLLED BY THE DOCTRINES OF	
8	EQUITABLE ESTOPPEL AND EQUITABLE TOLLING	7
9	A. Loman’s Claims Are Timely Under the Doctrine of Equitable	
10	Estoppel Because She Feared Reprisal From Weinstein Through His	
11	Ongoing Threat of Physical Violence and Intimidation	8
12	B. Loman’s Claims Are Timely Under the Doctrine of Equitable	
13	Tolling Because Weinstein’s Ongoing Threat of Physical Harm and	
14	Intimidation Created an Extraordinary Circumstance that	
15	Prevented Loman from Filing Suit.....	10
16	C. Loman’s Claims are Timely Under the Doctrine of Equitable Tolling	
17	Because the Injustice to Loman of Her Not Proceeding on Her	
18	Claims of Rape and Sexual Assault Outweighs Any Alleged	
19	Prejudice to Weinstein.....	10
20	II. LOMAN HAS ADEQUATELY PLEADED A TVPA CLAIM BECAUSE	
21	SHE PLEADED THAT A COMMERCIAL SEX ACT OCCURRED AND	
22	THAT WEINSTEIN KNOWINGLY ENTICED HER INTO THE	
23	COMMERCIAL SEX ACT	11
24	A. Loman Has Adequately Pleaded a TVPA Claim Because She	
25	Pleaded a Commercial Component to Weinstein’s Sexual Assault as	
26	Promises of Film Success Carry Value to an Aspiring Actress.....	12
27	B. Loman Has Adequately Pleaded a TVPA Claim Because She	
28	Pleaded that Weinstein Knowingly Enticed Her Into Participating	
	in a Commercial Sex Act	13

1	III. LOMAN’S COMMON LAW CLAIMS ARE SUBJECT TO THE ALIEN	
2	TORT STATUTE BECAUSE SHE PLEADED VIOLATIONS OF A	
3	CUSTOMARY LAW OF NATIONS.....	14

4	CONCLUSION	15
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TABLE OF AUTHORITIES

Cases

<i>Addison v. State,</i> 21 Cal.3d 313 (1978).....	11
<i>Bowoto v. Chevron Corp.,</i> 557 F. Supp. 2d 1080 (N.D. Cal. 2008)	14
<i>Cervantes v. City of San Diego,</i> 5 F.3d 1273 (9th Cir. 1993)	8
<i>Chang v. Biosuccess Biotech Co., Ltd.,</i> 76 F. Supp. 3d 1022 (C.D. Cal. 2014)	8
<i>Collins v. Gee West Seattle LLC,</i> 631 F.3d 1001 (9th Cir. 2011)	9
<i>Doe I v. Nestle USA, Inc.,</i> 766 F.3d 1013 (9th Cir. 2014)	15
<i>Doe v. Bakersfield City Sch. Dist.,</i> 136 Cal.App.4th 556 (Cal. Ct. App. 2006)	9
<i>In re Estate of Marcos Human Rights Litig.,</i> 25 F.3d 1467 (9th Cir. 1994)	15
<i>John R. v. Oakland Unified Sch. Dist.,</i> 48 Cal. 3d 438 (1989).....	8, 9
<i>Jones v. Blanas,</i> 393 F.3d 918 (9th Cir. 2004)	11
<i>Juan Doe I v. Mahony,</i> No. CV 10-02902-JST (JEMx), 2011 WL 13127889 (C.D. Cal. Feb. 25, 2011)	14, 15
<i>Kleinhammer v. City of Paso Robles,</i> No. SACV 06-0798-JFW (JTL), 2008 WL 11411472 (C.D. Cal. March 17, 2008)	8

1	<i>Lantzy v. Centex Homes,</i>	
2	31 Cal.4th 363 (2003)	8
3	<i>Manning v. Bunnell,</i>	
4	No. 2:12-cv-2440 MCE AC P., 2013 WL 2303231 (E.D. Cal. May 24, 2013)	8
5	<i>McDonald v. Antelope Valley Cmty. Coll. Dist.,</i>	
6	45 Cal.4th 88 (2008)	11
7	<i>McMahon v. Valenzuela,</i>	
8	No. 2:14-cv-02085-CAS(AGRx), 2015 WL 5680305 (C.D. Cal. Sep. 24, 2015)	
9	8, 10, 11
10	<i>Noble v. Weinstein,</i>	
11	335 F. Supp. 3d 504 (S.D.N.Y. 2018)	12, 13
12	<i>Ortega v. Pajaro Valley Unified School Dist.,</i>	
13	64 Cal. App. 4th 1023 (Cal. Ct. App. 1998)	9
14	<i>Sarei v. Rio Tinto, PLC,</i>	
15	550 F.3d 822 (9th Cir. 2008)	15
16	<i>Stoll v. Runyon,</i>	
17	165 F.3d 1238 (9th Cir. 1999)	10
18	<i>Ticer v. Young,</i> No. 16-cv-02198-KAW, 2018 WL 2088393 (N.D. Cal. May 4,	
19	2018)	10
20	<i>Wong v. Beebe,</i>	
21	732 F.3d 1030 (9th Cir. 2013)	10
22	Statutes	
23	18 U.S.C. § 1591	12
24	18 U.S.C. § 1595	7
25	28 U.S.C. § 1350	14
26	Cal. Civ. Proc. § 340(c)	7
27	Cal. Civ. Proc. § 335.1	7

Other Authorities

Rome Statute of the International Criminal Court, art. 7 (g) (1998)15

PRELIMINARY STATEMENT

Plaintiff Emma Loman ("Loman") has adequately pleaded claims against Defendant Harvey Weinstein ("Weinstein") for sex trafficking in violation of the Trafficking Victims Protection Act ("TVPA") and for the common law claims of assault, battery, and false imprisonment. These claims arose from Weinstein's premeditated rape and sexual assault of Loman at the 2006 Cannes Film Festival in France.

In 2004, Loman was an aspiring actress and successful model who met Weinstein, a powerful film producer, at the Venice Film Festival. (Civil Complaint for Damages, Dkt. No. 1 ("Compl.") ¶¶ 2-4.) In 2006, Weinstein contacted Loman under the guise of discussing her acting career and the possibility of appearing in one of Weinstein's films, arranging for the two to meet at the 2006 Cannes Film Festival. (Compl. ¶¶ 4-10.) At Cannes, Weinstein invited Loman to his hotel suite to have what he claimed were substantive discussions about Loman's career. (Compl. ¶¶ 11, 12.) However, once in his hotel suite, Weinstein raped and sexually assaulted Loman. (Compl. ¶¶ 13, 56, 63-68.)

After the rape occurred, at a later date, Weinstein again tried to get Loman to participate in sex acts with him. (Compl. ¶ 76.) But this time, Loman resisted and successfully refused Weinstein's advances. (Compl. ¶ 77.) In response, Weinstein threatened her physical safety, while cornering her, and informed her that his security guards would not allow her to leave unless she promised to remain silent about Weinstein's rape and sexual assault of Loman. (Compl. ¶ 16.) Out of her concern for her physical well-being, a fearful Loman agreed. (See Compl. ¶¶ 74, 79-85.)

Weinstein's conduct intimidated Loman into the silence that Weinstein wanted. (Compl. ¶ 18.) After the second attempted sexual assault, Weinstein

1 screamed at Loman and berated her. (Compl. ¶ 85.) The following year (2007),
2 while Loman was in Los Angeles to shop a film in which she was cast, Weinstein
3 asked to meet with Loman to ensure that Loman was aware of Weinstein's
4 continuing influence in her industry. (Compl. ¶ 88.) Loman was afraid to decline
5 the meeting because she continued to believe Weinstein would endanger her
6 safety and her acting career. (*Id.*) Confirming Loman's fears, at the meeting,
7 Weinstein took a copy of Loman's film script and later had his production
8 company buy the film asserting his outside influence over Loman's career.
9 (Compl. ¶¶ 89-90.) Loman was then promptly fired from the film. (Compl. ¶ 90.)
10 Indeed, Loman later learned that Weinstein ordered her firing, and that
11 Weinstein told at least one other producer not to work with Loman in the future.
12 (Compl. ¶ 91.)

13 The physical threats of force and intimidation of Weinstein forced Loman
14 into silence for years. It was only after more powerful actresses began to come
15 forward in 2017 and Weinstein's influence waned significantly – he ended up
16 losing his position at his own company and was reviled in Hollywood – that
17 Loman finally felt safe coming forward to seek justice against a weakened
18 Weinstein.

19 All of Loman's claims are timely under California law under the doctrines
20 of equitable estoppel and equitable tolling.

21 Equitable estoppel applies to all of Loman's claims because Weinstein
22 intentionally intimidated Loman by threatening her physical safety and then by
23 taking actions to thwart Loman's film career. Not only was Weinstein physically
24 intimidating when they met (he was 100 pounds heavier than her), Loman was
25 well aware that Weinstein had his own security force (he posted six, apparently
26 armed, security guards outside his Cannes hotel suite) that he could use to
27 intimidate, and indeed did use to intimidate, Loman over time. Loman
28

1 reasonably feared that if she revealed anything, Weinstein would not only
2 destroy her career, but physically harm her as well. Her fears proved at least
3 partially justified when Weinstein purchased a film that Loman was set to be
4 cast in seemingly solely to fire Loman from the picture. This fear caused Loman
5 to reasonably fear for her safety if she filed suit against Weinstein, which at the
6 time would have unearthed allegations that likely would have destroyed his
7 career and marriage, leaving him with nothing to lose if he wished to seek
8 revenge against Loman.

9 Equitable tolling also applies for two reasons and independently permits
10 Loman's claims to proceed. First, the doctrine applies because Weinstein's
11 wrongful conduct in threatening and intimidating Loman created an
12 extraordinary circumstance that prevented Loman from filing suit. Loman was
13 terrified by Weinstein's threats of physical violence and by the prospect of
14 Weinstein taking further steps to ruin her acting career. Second, the doctrine of
15 equitable tolling applies because tolling the statutes of limitations here is in the
16 interests of justice. The doctrine requires that this Court balance the injustice to
17 the plaintiff in not being able to bring her lawsuit against the policy goals of
18 statutes of limitations.

19 Here, the injustice to Loman of not being able to seek redress for the life
20 altering crime of rape far outweighs the policy goals of the limitation laws as
21 applied to Weinstein. Such policy goal of limitations is to bring finality to settled
22 events and to protect a defendant from not being able to defend himself due to
23 old or lost evidence. But the policy goals of the statutes of limitations in fact
24 favor the tolling of Loman's claims: Weinstein has not highlighted any prejudice
25 he will suffer by these claims going forward other than his stated inability to
26 find unnamed individuals he claims are witnesses. Weinstein identifies his
27 assistant, the security guards, and other film makers as potential witnesses (who
28

1 supposedly were present immediately before and after Weinstein raped Loman,
2 or were present in the days before and after the rape). (Defendant Harvey
3 Weinstein's Memorandum in Support of Motion to Dismiss Plaintiff's
4 Complaint, Dkt. No. 28-1 (the "Motion"), 14.) But not even Weinstein claims that
5 any of these individuals actually observed Weinstein raping and assaulting
6 Loman. The policy interest in allowing Loman's claims to go forward outweighs
7 any prejudice Weinstein claims he may suffer.

8 Loman has adequately pleaded a claim under the TVPA. Loman has
9 sufficiently pleaded that Weinstein engaged in a commercial sex act as required
10 by the TVPA. Indeed, courts have held that, as here, the promise or expectation
11 of a film role, which Weinstein offered Loman, is enough to constitute the
12 commercial aspect of a TVPA claim. Loman has also pleaded that she was
13 enticed into the situation that resulted in her rape. Again, Weinstein's promises
14 of acting success were enough to arouse Loman's hopes and desires to succeed
15 in the film industry, which in turn enticed her to meet with Weinstein.

16 Loman's common law tort claims of assault, battery, and false
17 imprisonment may proceed here as they are subject to the Alien Tort Statute,
18 which allows the claims to be heard by courts in the United States even though
19 the rape and sexual assault of Loman took place in France. The Alien Tort Statute
20 applies because Loman has pleaded a violation of law—rape and sexual
21 assault—that is understood by the courts of this District to be a customary law
22 in the international community.

23 Loman's claims against Weinstein should be allowed to proceed because
24 the doctrines of equitable estoppel and equitable tolling apply to all of Loman's
25 claims. Weinstein's physical and career threats to Loman prevented and
26 intimidated her from coming forward until she reasonably believed it was safe
27 to do so. Loman has adequately pleaded all the required elements of a TVPA
28

claim and all of Loman's common law claims are subject to the Alien Tort Statute, giving this Court jurisdiction to hear all of Loman's claims. This action should proceed into discovery to be resolved on the merits.

STATEMENT OF FACTS

Loman – an actor, producer, and model – first met Weinstein in 2004 at the Venice Film Festival. (Compl. ¶¶ 24, 36.) Weinstein took Loman's contact information, but the two did not meet again until 2006., when Weinstein invited her to the Cannes Film Festival (Compl. ¶¶ 36–37.) Weinstein insisted on flying Loman to Cannes and paying for hotel accommodations. (Compl. ¶ 37.) Importantly to a young actor, Weinstein said he wanted to discuss her career and potential roles in Weinstein film productions, and even that he had a role in mind for her. (Compl. ¶ 38.) Loman was hesitant to attend because she did not personally know Weinstein. (Compl. ¶ 39.) But Weinstein was persistent and Loman, believing she could not pass up this professional opportunity, agreed to come to Cannes as Weinstein's guest. (*Id.*)

Once Loman arrived in Cannes, Weinstein invited Loman to his personal hotel suite (what Weinstein called his "office") to discuss scripts and film projects. (Compl. ¶¶ 42–44.) Loman accepted the invitation because many film executives used hotel suites at the festival to discuss business and show their status, wealth, and power. (Compl. ¶¶ 43–44.)

On the day of the meeting, Loman was escorted by Weinstein and his personal assistant by private elevator to Weinstein's suite. (Compl. ¶ 45.) But almost immediately, Weinstein's assistant left, leaving Loman and Weinstein alone in his suite. (Compl. ¶ 46.) Loman felt uncomfortable, but she knew how important this meeting could be to her film career. (Compl. ¶ 47.) At that point, Weinstein's professional demeanor changed, and he began making sexually charged statements to Loman. (Compl. ¶¶ 48–49.) Loman made clear that she

1 only wanted to discuss business, but Weinstein persisted in making lewd
2 statements and insisted that he give Loman a massage. (Compl. ¶¶ 50–51, 53.)
3 Loman, again, rebuffed Weinstein’s advances, but Weinstein began to touch
4 Loman against her will. (Compl. ¶ 56.) Loman explicitly told Weinstein that she
5 did not consent. (*Id.*) She remained in the suite because she knew how important
6 this meeting was to her career, and she believed she could get Weinstein to get
7 back to the charming, business-oriented person she thought she knew. (Compl.
8 ¶ 58.) But Weinstein persisted with his sexual behavior by changing into a
9 bathrobe and asking Loman if she would like to watch him shower. (Compl.
10 ¶¶ 59, 61.) After Loman again rebuffed Weinstein, he began to touch and kiss
11 Loman without her consent. (Compl. ¶¶ 62–64.) She was unable to stop
12 Weinstein, who was at least 100 pounds heavier and three inches taller than
13 Loman. (Compl. ¶ 65.) Weinstein then proceeded to rape Loman. (Compl. ¶ 66).

14 After Weinstein allowed Loman to leave when he finished raping her, she
15 was shocked and traumatized. (Compl. ¶ 68–69.) On a later date, Weinstein
16 invited Loman back to his suite to discuss scripts. (Compl. ¶ 71.) Even though
17 she was still shocked and terrified by the rape, she agreed to accompany
18 Weinstein on the condition that she would not be alone with him. (Compl.
19 ¶¶ 72–73.) This time, Loman noticed that Weinstein had several armed security
20 guards near his suite. (Compl. ¶ 74.) Once she arrived in the suite, Weinstein
21 made clear he would not be discussing business and he indicated that he wanted
22 to have a threesome with Loman and another woman in the suite. (Compl.
23 ¶¶ 75–76.) Loman attempted to leave but Weinstein became physically
24 aggressive, blocking her from exiting the suite and cornering her against the
25 wall, holding her against her will for about an hour. (Compl. ¶¶ 78–79, 84.)
26 Loman began to shout and cry, as she feared another rape. (Compl. ¶ 80.)
27 Weinstein eventually let her leave but later called Loman to scream and berate
28

her for not having sex with him at their last meeting. (Compl. ¶ 84–85.) After the second incident, Weinstein rescinded all of his invitations to Cannes events with Loman. (Compl. ¶ 86.)

The following year, when Loman was in Los Angeles to shop a film she was set to star in, Weinstein contacted Loman to meet again. (Compl. ¶¶ 87–88.) Loman complied with Weinstein’s request because she was still terrified of Weinstein physically hurting her or ruining her career. (Compl. ¶ 88). At first, Loman felt relieved because Weinstein acted professionally and took a copy of Loman’s script. (Compl. ¶ 89.) However, later that day Loman learned that Weinstein purchased the rights to the script. (Compl. ¶ 90.) Loman was then abruptly fired from the film. (*Id.*) She later learned that Weinstein had ordered the firing. (Compl. ¶ 91.) She also learned that Weinstein warned at least one other producer to not do any business with Loman. (*Id.*) Loman understood these actions as an open threat to her so that she would not disclose Weinstein’s actions in Cannes and in Los Angeles. (*Id.*) Loman was dissuaded from coming forward and seeking redress against Weinstein for years because of Weinstein’s threats and intimidation. (See *Id.*)

ARGUMENT

I. LOMAN’S CLAIMS ARE TIMELY BECAUSE ANY STATUTES OF LIMITATIONS HAVE BEEN TOLLED BY THE DOCTRINES OF EQUITABLE ESTOPPEL AND EQUITABLE TOLLING

Loman’s claims are timely due to both the doctrines of equitable estoppel and equitable tolling because she reasonably feared reprisal from Weinstein if she brought suit, and because justice demands tolling of the limitations statutes. The limitations period for a claim under the TVPA (ten years); for assault (two years); for battery (two years); and for false imprisonment (one year) all may be tolled under the doctrines of equitable estoppel or equitable tolling. 18 U.S.C. § 1595(c); Cal. Civ. Proc. §335.1; Cal. Civ. Proc. § 340(c). Both doctrines apply, such

1 that all of Loman's claims are timely and may proceed and Weinstein's Motion
2 must be denied.

3 The Motion also must be denied because, as the Ninth Circuit has
4 recognized, California's equitable tolling doctrines are "fact-intensive" inquiries
5 that are "more appropriately applied at the summary judgment or trial stage of
6 litigation." *Cervantes v. City of San Diego*, 5 F.3d 1273, 1276 (9th Cir. 1993)
7 (characterizing as "unusual" situation where equitable tolling may be resolved
8 on motion to dismiss); see *Kleinhammer v. City of Paso Robles*, No. SACV 06-0798-
9 JFW (JTL), 2008 WL 11411472, at *8 (C.D. Cal. March 17, 2008) ("the Ninth Circuit
10 has stressed that California's fact-intensive test for equitable tolling is more
11 appropriately applied at the summary judgment stage of litigation, and that it
12 is the unusual case in which a court can conclude from the face of the complaint
13 that, as a matter of law, plaintiff cannot show equitable tolling"), *adopted by* No.
14 CV 06-0798-JFW (JTL), 2008 WL 11411425 (C.D. Cal. Mar. 17, 2008). The Motion
15 should be denied and, at a minimum, the validity of Loman's claims of equitable
16 estoppel and equitable tolling should be determined at a later stage.

17 **A. Loman's Claims Are Timely Under the Doctrine of Equitable**
18 **Estoppel Because She Feared Reprisal From Weinstein**
19 **Through His Ongoing Threat of Physical Violence and**
Intimidation

20 The statutes of limitations for Loman's claims are tolled by the doctrine of
21 equitable estoppel because she feared reprisal from Weinstein if she brought
22 suit. Under California law, equitable estoppel acts to estop a defendant from
23 asserting a statute of limitations defense where the defendant's own conduct
24 prevented the defendant from bringing suit. See *Chang v. Biosuccess Biotech Co.,*
25 *Ltd.*, 76 F. Supp. 3d 1022, 1053 (C.D. Cal. 2014) (citing *Lantzy v. Centex Homes*, 31
26 Cal.4th 363, 383 (2003)); *Manning v. Bunnell*, No. 2:12-cv-2440 MCE AC P., 2013
27 WL 2303231, at *3 (E.D. Cal. May 24, 2013) (a party "should not be allowed to
28

benefit from its own wrongdoing”) (quoting *Collins v. Gee West Seattle LLC*, 631 F.3d 1001, 1004 (9th Cir. 2011)).

Equitable estoppel is “certainly” appropriate where a defendant engaged in acts of “violence or intimidation” that were “intended to prevent the filing of a claim.” *McMahon v. Valenzuela*, No. 2:14-cv-02085-CAS(AGRx), 2015 WL 5680305, at *12 (C.D. Cal. Sep. 24, 2015) (citing *John R. v. Oakland Unified Sch. Dist.*, 48 Cal. 3d 438, 445 (1989) (applying equitable estoppel where teacher’s threats of retaliation prevented sexually abused student from pursuing claims)); see also *Doe v. Bakersfield City Sch. Dist.*, 136 Cal.App.4th 556, 571-3 (Cal. Ct. App. 2006) (teacher’s threats and plaintiff’s fear, even into adulthood, necessitated application of equitable estoppel); *Ortega v. Pajaro Valley Unified School Dist.*, 64 Cal. App. 4th 1023, 1050 (Cal. Ct. App. 1998) (teacher’s continuous verbal threats and intimidating conduct supported application of the equitable estoppel doctrine). Such tolling applies until the *effects* of the intimidation has ceased. *McMahon*, 2015 WL 5680305 at *13. This doctrine applies here.

Indeed, Weinstein intentionally intimidated Loman by making physical threats that prevented her from bringing suit. (Compl. ¶¶ 65, 74, 78–79, 85.) Weinstein’s actions included physically preventing her from leaving his hotel suite, and posting armed security guards outside his suite for no reasonable purpose except intimidation. (See Compl. ¶¶ 16, 74.)

Loman reasonably feared physical harm to her if she acted against Weinstein, a hugely powerful figure who had shown a willingness to harm her physically (including by raping her), and carefully cultivated a reputation in the industry of being willing to resort to physical violence. (See, e.g., Compl. ¶¶ 58, 65, 78.) Weinstein later even bought a script simply to fire Loman from a film in order to signal to her that those threats still stood. (Compl. ¶¶ 90–91.) Loman’s

claims should be properly equitably estopped as Loman reasonably feared physical harm from Weinstein if she brought suit.

B. Loman's Claims Are Timely Under the Doctrine of Equitable Tolling Because Weinstein's Ongoing Threat of Physical Harm and Intimidation Created an Extraordinary Circumstance that Prevented Loman from Filing Suit

Loman's claims are also properly tolled under the doctrine of equitable tolling. The elements of equitable tolling are that (1) the plaintiff pursued her rights diligently and (2) an extraordinary circumstance stood in her way. *Ticer v. Young*, No. 16-cv-02198-KAW, 2018 WL 2088393, at *7 (N.D. Cal. May 4, 2018) (citing *Wong v. Beebe*, 732 F.3d 1030, 1052 (9th Cir. 2013)).

The first element (diligent pursuit of the claim) is satisfied so long as the plaintiff acts as diligently as a reasonable person under her particular circumstances. *Ticer*, 2018 WL 2088393, at *7. The second element (existence of extraordinary circumstances) is satisfied where "wrongful conduct" by a defendant delays a plaintiff's filing of her claim. *Stoll v. Runyon*, 165 F.3d 1238, 1242 (9th Cir. 1999) (equitably tolling limitations period where plaintiff "impaired" by rape and sexual assault); see *Ticer*, 2018 WL 2088393, at *7.

Loman's claims are subject to equitable tolling because Weinstein's physical threats prevented her from filing suit within the limitations period. A reasonable person exercising diligence in her situation would not have taken any further steps out of fear of Weinstein's reprisal. Loman's claims are timely because they are equitably tolled.

C. Loman's Claims are Timely Under the Doctrine of Equitable Tolling Because the Injustice to Loman of Her Not Proceeding on Her Claims of Rape and Sexual Assault Outweighs Any Alleged Prejudice to Weinstein

Loman's claims are also equitably tolled because the injustice she would suffer due to the barring of her claims outweighs any prejudice to Weinstein.

California courts apply equitable tolling to “soften the harsh impact of technical rules” in the interests of fairness where the injustice to a plaintiff in being unable to bring a claim outweighs the prejudice to the defendant. *Jones v. Blanas*, 393 F.3d 918, 928 (9th Cir. 2004) (district court erred in failing to apply equitable tolling because movant was civilly confined and unable to file suit within the limitations period). Thus, California courts will equitably toll a statute of limitations where “justice demands it.” *McMahon*, 2015 WL 5680305, at *12 (quoting *McDonald v. Antelope Valley Cmty. Coll. Dist.*, 45 Cal.4th 88, 99–100 (2008)). Accordingly, the doctrine turns on a “balancing” of the “injustice” to the plaintiff against policy goals of the limitations statute. *McMahon*, 2015 WL 5680305, at *12 (quoting *Addison v. State*, 21 Cal.3d 313, 321 (1978)).

First, the injustice to Loman far outweighs the prejudice to Weinstein. Loman was threatened and intimidated into not filing her claims in a timely fashion. The rape and sexual assault of Loman demands that equitable tolling be applied to this case. Second, Weinstein is not prejudiced by the tolling of these claims. Weinstein has not pointed to any prejudice except the loss of his ability to identify witnesses. But none of the potential witnesses he raises (his assistant, security guards, or filmmakers present at the festival) were even alleged to be present during the rape and assault at issue. The demands of justice require that the statutes of limitations are tolled as to all of Loman’s claims.

II. LOMAN HAS ADEQUATELY PLEADED A TVPA CLAIM BECAUSE SHE PLEADED THAT A COMMERCIAL SEX ACT OCCURRED AND THAT WEINSTEIN KNOWINGLY ENTICED HER INTO THE COMMERCIAL SEX ACT

Loman has adequately pleaded her TVPA claim. Under the TVPA, in order to state a claim, a plaintiff must adequately plead that the defendant knowingly and in interstate or foreign commerce “(1) recruited, enticed, harbored, transported, provided, obtained, or maintained by any means a

1 person; (2) ‘knowing, or in reckless disregard of the fact, that means of force,
 2 threats of force . . . or any combination of such means will be used’; (3) ‘to cause
 3 the person to engage in a commercial sex act.’” *Noble v. Weinstein*, 335 F. Supp.
 4 3d 504, 515 (S.D.N.Y. 2018) (quoting 18 U.S.C. § 1591). Here, Loman has
 5 adequately pleaded that Weinstein enticed her into committing a commercial
 6 sex act.

7 **A. Loman Has Adequately Pleaded a TVPA Claim Because She**
 8 **Pleaded a Commercial Component to Weinstein’s Sexual**
 9 **Assault as Promises of Film Success Carry Value to an Aspiring**
 10 **Actress**

11 Loman has adequately pleaded her sex trafficking claims because she
 12 pleaded a “commercial” component to Weinstein’s sexual assault. Under the
 13 TVPA, a “[c]ommercial sex act” is defined as “any sex act, on account of which
 14 anything of value is given to or received by any person.” 18 U.S.C. § 1591(e)(3).
 15 In *Noble v. Weinstein*, the court explained that to an aspiring actress, meeting a
 16 person like Weinstein “carries value, in and of itself.” *Noble*, 335 F. Supp. 3d 521.
 17 Even though the victim was not given something tangible, “the expectation of a
 18 film role, of a modeling meeting” were things of value to the victim. *Id.* “[T]he
 19 reasonable expectation of receiving those things in the future, based on
 20 [Weinstein’s] repeated representations that she would, is sufficient.” *Id.*
 21 Notwithstanding Weinstein’s claim that the TVPA requires an explicit quid pro
 22 quo promise, nothing in *Noble* even suggests such a requirement.
 23 Compare Motion 9:12–18, with *Noble*, 335 F. Supp. 3d 515. As Loman pleaded,
 24 there was, like in *Noble*, a clear understanding between Weinstein and Loman
 25 was offering a thing of value (lucrative film roles, also as in *Noble*) if she visited
 26 his hotel suite. (Compl. ¶¶ 40–42, 50–51.) Nothing in *Noble* supports Weinstein’s
 27 logic that a defendant may avoid TVPA liability simply by being coy, when all
 28 parties understand the interaction as a commercial one.

1 The same reasoning in *Noble* applies here. Weinstein told Loman that he
 2 had several parts for which Loman would be perfect for and enticed Loman to
 3 come to his “office” to discuss the highly confidential scripts. (Compl. ¶ 42.)
 4 Once Weinstein got Loman into his “office” (actually his luxury hotel suite in
 5 Cannes), he proceeded to sexually assault and rape Loman. (Compl. ¶¶ 43, 53–
 6 54, 56, 61–66.) As such, Loman adequately pleaded her TVPA claim because she
 7 has pleaded a commercial component to Weinstein’s rape and sexual assault.

8 **B. Loman Has Adequately Pleaded a TVPA Claim Because She**
 9 **Pleaded that Weinstein Knowingly Enticed Her Into**
 10 **Participating in a Commercial Sex Act**

11 Loman’s TVPA claim is adequately pleaded because she pleaded that
 12 Weinstein knowingly enticed her to engage in a commercial sex act. While word
 13 “entices” was not defined by Congress when the TVPA was drafted, the *Noble*
 14 court drew on definitions from widely-accepted dictionaries to define the term
 15 as “to attract artfully or adroitly or by arousing hope or desire.” *Noble*, 335 F.
 16 Supp. 3d 517. As the *Noble* court also recognized, even empty promises of film
 17 stardom and success are more than enough to entice an aspiring actor and to
 18 arouse the “hope and desire” necessary to plead the TVPA element of
 19 enticement. *Id.*

20 Like the victim in *Noble*, Loman was enticed by the claims that Weinstein
 21 was interested in her career and that Weinstein wanted to cast Loman in
 22 Weinstein’s projects. (Compl. ¶ 37.) Loman was hopeful that Weinstein could
 23 propel her film career. Weinstein encouraged Loman to call him so that he could
 24 give her professional advice. (Compl. ¶ 40.) Weinstein even told Loman that he
 25 wanted discuss Loman’s work or the film industry in general. (Compl. ¶ 41.)
 26 Weinstein then said that he had several parts in upcoming films that he thought
 27 Loman could act in. (Compl. ¶ 42.) Although Weinstein’s interest in Loman’s
 28

1 career turned out to only be a ploy to rape and sexually assault her, Loman was
 2 enticed into believing that these claims were true. In the end, Weinstein's played
 3 at Loman's hopes and desires to succeed in the film industry to facilitate her
 4 being a part of a commercial sex act that violated the TVPA.

5 Loman has adequately pleaded her TVPA claim because she pleaded that
 6 Weinstein knowingly enticed her into committing a commercial sex act.

7
 8 **III. LOMAN'S COMMON LAW CLAIMS ARE SUBJECT TO THE**
 9 **ALIEN TORT STATUTE BECAUSE SHE PLEADED VIOLATIONS**
 10 **OF A CUSTOMARY LAW OF NATIONS**

11 Loman's claims are subject to the Alien Tort Statute ("ATS") because she
 12 has pleaded an action committed in violation of the law of nations—rape. The
 13 ATS holds that "[t]he district courts shall have original jurisdiction of any civil
 14 action by an alien for a tort only, committed in violation of the law of nations or
 15 a treaty of the United States." 28 U.S.C. § 1350. To plead an ATS claim and give
 16 the district court jurisdiction, there must be "a (1) tort claim, (2) filed by an alien,
 17 that (3) alleges a violation of the law of nations or a treaty of the United States."
 18 *Juan Doe I v. Mahony*, No. CV 10-02902-JST (JEMx), 2011 WL 13127889, at *3 (C.D.
 19 Cal. Feb. 25, 2011) (district court had subject matter jurisdiction as the ATS
 20 applied to plaintiff's claims of rape and sexual abuse). As such, "[c]ourts have
 21 consistently permitted the extraterritorial application of the ATS to non-U.S.
 22 nationals, provided the claims are brought under a sufficiently definite and
 23 universal norm of international law." *Bowoto v. Chevron Corp.*, 557 F. Supp. 2d
 24 1080, 1088 (N.D. Cal. 2008) (ATS only applicable if the party alleges "a violation
 of a definite and accepted norm of international law").

25 However, "[n]ot all violations of international law are actionable under
 26 the ATS . . . [as] a party must allege a violation of a definite and accepted norm
 27 of international law." *Bowoto*, 557 F. Supp. 2d 1089. The test is whether a
 28

1 “contemporary international legal norm underlying a proposed ATS claim is
 2 ‘specific, universal, and obligatory.’” *Doe I v. Nestle USA, Inc.*, 766 F.3d 1013, 1019
 3 (9th Cir. 2014) (quoting *In re Estate of Marcos Human Rights Litig.*, 25 F.3d 1467,
 4 1475 (9th Cir. 1994)). Courts will look to the “customary international law” that
 5 consists of “rules that States universally abide by, or accede to, out of a sense of
 6 legal obligation and mutual concern.” *Doe I*, 766 F.3d at 1019.

7 Courts have found that “rape and sexual abuse” is “an actionable offense
 8 under the ATS as a crime against humanity.” *Juan Doe I*, 2011 WL 13127889, at
 9 *7; see also *Rome Statute of the International Criminal Court*, art. 7 (g) (1998) (listing
 10 rape as a crime against humanity). Additionally, the plaintiff does not have to
 11 exhaust the availability of local remedies before filing an ATS claim. *Sarei v. Rio*
 12 *Tinto, PLC*, 550 F.3d 822, 824 (9th Cir. 2008) (judicially-imposed or prudential
 13 exhaustion is not a prerequisite to the exercise of jurisdiction).

14 Loman’s common law claims are subject to the ATS because she has
 15 pleaded a crime—rape—that is internationally accepted as a crime that is in
 16 violation of the law of nations. Even though the incident occurred in France, this
 17 Court has jurisdiction because Loman has pleaded all of the elements of an ATS
 18 claim. She has pleaded a tort claim, filed by an alien, which alleges a violation
 19 of the laws of nations. Loman was brutally raped by Weinstein. (Compl. ¶¶ 67-
 20 68.) The crime of rape is so base and violating that it is an internationally
 21 recognized crime. Thus, Loman’s common law claims against Weinstein give
 22 this Court jurisdiction to hear the claims under the ATS.

23 CONCLUSION

24 Weinstein brutally raped and sexually assaulted Loman. Despite these
 25 horrendous actions taking place outside the United States and not within the
 26 applicable statutes of limitation, Loman’s claims should be allowed to progress
 27 because the doctrines of equitable estoppel and equitable tolling apply to these
 28

1 claims. Loman's claims are also properly before this Court because the ATS
2 dictates it. Thus, for the reasons set forth above, the Court should deny
3 Weinstein's motion to dismiss.

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5 Dated: April 22, 2019

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